

REMARKS

The present Amendment is in response to the Office Action mailed October 26, 2006, in the above-identified application. Enclosed herewith is a Petition requesting a three-month extension of time for resetting the deadline for responding to the Office Action from January 26, 2007, to and including April 26, 2007.

As an initial matter, Applicants acknowledge and appreciate the Examiner's indication that claims 6-8 and 10-14 contain allowable matter. Specifically, the Examiner objected to claims 6-8 and 10-14 as being dependent upon a rejected base claim, but indicated that the claims would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner also indicated that claim 17 would be allowable if rewritten to overcome a rejection under 35 U.S.C. §112, second paragraph, and to include all of the limitations of the base claim and any intervening claims.

The Examiner objected to claim 7 as having an informality. The Examiner noted that claim 7 should read as follows: "is effected by at least one of a dimension of at least one of the prongs or a material strength of at least one of the prongs." In response, Applicants have amended claim 7 as suggested by the Examiner.

The Examiner rejected claims 12 and 15-18 under 35 U.S.C. §112, second paragraph, as being indefinite. In response, claim 12 has been amended to depend from claim 11. Claims 15-19 have been amended to change the recitation "extents" to --prong extension--. Applicants refer the Examiner to paragraph [0017] of the present application, which provides support for the above-mentioned amendment of claims 15-19. In view of the above-noted amendment, Applicants respectfully

assert that claims 12 and 15-18 now satisfy the requirements of 35 U.S.C. §112, second paragraph.

The Examiner indicated that the claim 16 recitation "wherein at least one of the extents has a thickness less than a width of an annular groove of the distraction" is unclear. In response, Applicants have amended claim 16 to correct the indefiniteness issues noted by the Examiner. Applicants refer the Examiner to paragraph [0017] of the originally filed specification, which provides support for the limitations found in amended claim 16.

The Examiner rejected claims 1-5, 15, and 18-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,782,830 to Farris. Referring to FIGS. 7 and 8 thereof, Farris discloses an insertion device having a proximal end, a distal end and a longitudinal axis that extends from the proximal end to the distal end. The insertion device has jaws 55 that are closed by sliding a sleeve 160 along the longitudinal axis and toward the distal end of the insertion device.

In contrast to Farris, the present application discloses a device whereby prongs 214A and 214B (see FIG. 2G) are closed by rotating a sleeve about a longitudinal axis. As shown in FIG. 2E of the present application, the sleeve 206 includes a non-circular bore 218 having a width 220 that is greater than a depth 222. When the sleeve 206 is rotated about a longitudinal axis defined by the extension 204, the sides of the bore 218 defining the depth 222 of the bore bear against the sides of the prongs 214A and 214B for closing the prongs.

Independent claim 1 is unanticipated by Farris because the cited reference neither discloses nor suggests an apparatus with "said sleeve having a bore that extends along the longitudinal axis of the extension, the bore defining a cross-section having a width that is greater than a depth, wherein the sleeve is rotatable about the extension longitudinal

axis so that the sides of the bore defining the depth of the cross-section bear on at least one of the prongs to move the holding enclosure to a contracted state in which the preparation device cannot be removed from the holding enclosure." Thus, the limitations of claim 1 require the sleeve to be rotated about a longitudinal axis for closing the prongs, while Farris teaches closing the jaw 55 (FIG. 7) by sliding the sleeve along the longitudinal axis, toward the distal end of the device. For the above reasons, independent claim 1 is unanticipated by Farris and is otherwise allowable. All of the remaining claims are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 1-4, 9, and 15-16 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,443,514 to Steffe. Applicants note that Steffe is similar to Farris in that the opposing clamp halves 130 (FIG. 4) are brought together by advancing a sleeve along a longitudinal axis toward a distal end of the tool. In contrast, as noted above, the apparatus in the present application is closed by rotating a sleeve about a longitudinal axis so that the sidewalls defining the depth of a bore engage the prongs for closing the prongs. Thus, claim 1 is unanticipated by Steffe because it neither teaches nor suggests an apparatus with "said sleeve having a bore that extends along the longitudinal axis of the extension, the bore defining a cross-section having a width that is greater than a depth, wherein the sleeve is rotatable about the extension longitudinal axis so that the sides of the bore defining the depth of the cross-section bear on at least one of the prongs to move the holding enclosure to a contracted state in which the preparation device cannot be removed from the holding enclosure." All of the remaining claims are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Claims 1-3, 9, and 15 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,923,815 to Hildebrand. Referring to FIGS. 10 and 11 thereof, Hildebrand also discloses an instrument whereby engagement features 17 are brought together by advancing a tubular lock member along a longitudinal axis, toward a distal end of the tool. In contrast, the prongs of the present application are closed by rotating the sleeve about a longitudinal axis of the tool. Thus, independent claim 1 is unanticipated by Hildebrand because the reference neither teaches nor suggests an apparatus with "said sleeve having a bore that extends along the longitudinal axis of the extension, the bore defining a cross-section having a width that is greater than a depth, wherein the sleeve is rotatable about the extension longitudinal axis so that the sides of the bore defining the depth of the cross-section bear on at least one of the prongs to move the holding enclosure to a contracted state in which the preparation device cannot be removed from the holding enclosure." All of the remaining claims are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for reasons set forth above.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Application No.: 10/784,629

Docket No.: SPINE 3.0-437 P P P P P P CON V

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Respectfully submitted,

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